

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MICHAEL W. GRAY
Claimant

VS.

GREAT PLAINS MOBILE HOME MOVERS
Respondent

AND

EMPIRE FIRE & MARINE INSURANCE COMPANY
and AETNA CASUALTY & SURETY COMPANY
 Insurance Carrier

Docket No. 202,027

ORDER

Claimant requests review of the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on August 15, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for benefits on the basis that claimant had failed to prove his accident arose out of the course of employment. The issues before the Administrative Law Judge were whether claimant was an employee of the respondent or a statutory employee under K.S.A. 44-503. Those are the issues now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds:

The parties stipulated that claimant was injured on May 19, 1995 when he was involved in a truck accident. At the time of the accident, claimant was returning from Arkansas after helping to deliver a mobile home. Claimant was working with Mr. Bill Sorrel who was an owner/operator who had leased his semi-truck to the respondent Great Plains Mobile Home Movers to transport mobile homes. On the trip to Arkansas, claimant "flagged" for Mr. Sorrel, meaning that he drove in front of the truck and warned other drivers of the oversized load. Claimant drove his own pickup and furnished his own equipment such as flags, signs, and flashing light. Although claimant had previously flagged for other drivers and companies, this was his first occasion to flag for Mr. Sorrel. The accident occurred on the return trip to Kansas when Mr. Sorrel allowed claimant to drive the semi-truck.

Respondent is a company that delivers mobile homes throughout the United States. Respondent's Robert Redinger testified that he believed Mr. Sorrel was not an employee of his company but an owner/operator, or independent operator, who leased his truck to the respondent. Mr. Redinger testified that each driver is responsible for hiring and firing their own flaggers and that the drivers are responsible for paying their wages. Although he was responsible for directing claimant to Mr. Sorrel, Mr. Redinger testified Mr. Sorrel had the right to refuse claimant as his flagger and that claimant's wages were to be paid by the driver. Although Mr. Redinger advanced \$200.00 to claimant in order to make the trip, the advance was deducted from the monies to be paid to Mr. Sorrel.

Transporting mobile homes is respondent's principal trade and business. Respondent contracts with the individuals and businesses for whom it transports and directs its drivers to pickup and deliver the homes. Respondent owns the licenses and permits required to transport the homes through the various states and selects the routes the drivers will take.

Under these unique facts and circumstances, the Appeals Board finds claimant was an employee of the respondent and the accident arose out of and in the course of employment with the respondent. The Appeals Board finds the respondent exercised sufficient control over Mr. Sorrell to conclude that Mr. Sorrell was an employee of the respondent, rather than an independent contractor, who had been given the authority by respondent to hire claimant to flag. Even if respondent did not hire claimant, Mr. Sorrell did and he had the apparent authority to do so. Claimant was injured on the return trip from Arkansas and, therefore, the accident arose out of and in the course of employment with the respondent.

The Kansas Workers Compensation Act, K.S.A. 44-501 et seq., is to be liberally construed for the purpose of bringing employers and employees within the provisions of the Act to provide the protections of the Act to both. Chapman v. Beech Aircraft Corp., __ Kan. __, docket # 72,299, syl. 1, December 8, 1995.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on August 15, 1995 should be, and hereby is, reversed; that claimant is an employee of the respondent; that claimant's accident arose out of and in the course of his employment with the respondent; and that this case should be remanded to the

Administrative Law Judge for determination of any remaining issues consistent with this Order. That the Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.

Dated this ____ day of December, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, Kansas
Gregory D. Worth, Lenexa, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director